

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PEDRO ORTIZ,

Petitioner,

- against -

ROBERT ERCOLE, Superintendent,  
Green Haven Correctional Facility,

Respondent.  
-----X

**USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: JAN 22 2008**

07 Civ. 02178 (PAC) (AJP)

OPINION & ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Petitioner Pedro Ortiz ("Ortiz") seeks a writ of habeas corpus from his April 19, 2002 conviction, after a jury trial in Supreme Court, New York County, of first degree manslaughter and two counts each of second and third degree criminal possession of a weapon, and concurrent sentences, the longest of which was fifteen years. In his habeas petition, Ortiz claims that: (1) the trial court erred in refusing to admit the relevant part of the Vienna Convention and instruct the jury that, in determining whether Ortiz's statements were voluntary, it could consider the police failure to inform him of his rights under the Convention; and (2) his sentence was excessive.

Ortiz filed his writ of habeas corpus on March 14, 2007, and the case was referred to Magistrate Judge Andrew J. Peck. Magistrate Judge Peck issued his Report and Recommendation ("R&R") on July 23, 2007, recommending that Ortiz's habeas petition be denied. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the Magistrate Judge provided ten days from the service of the R&R for written objections and specifically advised that the "[f]ailure to file objections will result in a waiver of those objections for purposes of appeal." (R&R 37.) In a letter to the Court dated August 6, 2007, Ortiz requested an extension of the ten-day period in order to

formally submit a written objection. The Court granted Ortiz's request on August 20, 2007 and extended the filing deadline to September 14, 2007. Neither party, however, has submitted objections.

### **DISCUSSION**

"To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). Upon review and analysis, the Court finds no clear error in Magistrate Judge Peck's determinations that:

- (1) Ortiz's Vienna Convention claims lack merit and should be denied; and
- (2) Ortiz's excessive sentence claim does not provide a basis for federal habeas relief.

Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion, and Ortiz's habeas petition is DENIED. Pursuant to 28 U.S.C. § 1915(a)(3), I find that any appeal from this order would not be taken in good faith. Ortiz did not file objections to the Report and Recommendation, as he was required to do in order to preserve his right to appeal.

The Clerk of the Court is directed to enter an Order closing this case.

Dated: New York, New York  
January 22, 2008

SO ORDERED



PAUL A. CROTTY  
United States District Judge

**Copies Mailed By Chambers**